

Canal Winchester

*Town Hall
10 North High Street
Canal Winchester, OH 43110*



Meeting Agenda

July 29, 2019

6:00 PM

Committee of the Whole

*Bruce Jarvis – President
Mike Walker – Vice President
Jill Amos
Will Bennett
Bob Clark
Mike Coolman
Patrick Lynch*

A. Call To Order

B. Roll Call

C. Also In Attendance

Mayor Ebert, Amanda Jackson, Sergeant Cassel

D. Items for Discussion

[19-065](#)

Hands Free Ordinance ([Canal Winchester Ordinance, FrostBrownTodd Memo, Section 331.44 Redline, Bexley Ordinance](#))

19-066

Community Coffee

E. Adjournment

[Print](#)

Canal Winchester, OH Code of Ordinances

331.44 SENDING, READING OR WRITING A TEXT MESSAGE OR ACCESSING THE INTERNET WHILE DRIVING.

(a) As used in this section:

- (1) "Text message" means any message sent, stored or received via mobile communication device.
For the purpose of this section, an email message shall be considered a text message.
- (2) "Mobile communication device" means any portable electronic device capable of transmitting or receiving data in the form of a text message or capable of accessing the internet including but not limited to a wireless telephone, a text-messaging device, a personal digital assistant, or a personal computer, but specifically excluding portable internet based vehicle navigation systems being used for that purpose.
- (3) "Emergency vehicles" and "public safety vehicles" shall have the same meaning as set forth in Ohio R.C. 4511.01(D) and (E).

(b) No person shall operate a motor vehicle while using a mobile communication device to:

- (1) Manually enter letters, numbers or text messages or read any received emails or text messages transmitted to or stored within such device; or
- (2) Send, read, create, or interact with internet-based content, play games or otherwise interact with the internet.

(c) This provision shall not apply to any of the following:

- (1) Operators of emergency or public safety vehicles where the operator of a public safety device uses such device in the course of the operator's official duties;
- (2) Any person reporting a health or safety emergency;
- (3) Drivers parked, standing or stopped or removed from the flow of traffic, or stopped due to an inoperable vehicle;
- (4) A person reading, selecting, or entering a name or telephone number in an electronic wireless communication device for the purpose of making or receiving a telephone call;
- (5) A person operating a commercial truck while using a mobile data terminal that transmits and receives data in the course of the person's official duties;

(d) Notwithstanding any provision of law to the contrary, no law enforcement officer shall cause an operator of an automobile being operated on any street or highway to stop the automobile for the sole purpose of determining whether a violation of subsection (b) hereof has been or is being committed or for the sole purpose of issuing a ticket, citation or summons for a violation of that nature or causing the arrest of or commencing a prosecution of a person for a violation of that nature, and no law enforcement officer shall view the interior or visually inspect any automobile being operated on any street or highway for the sole purpose of determining whether a violation of that nature has been or is being committed.

(e) Whoever violates this section shall be guilty of a minor misdemeanor.

(Ord. 30-10. Passed 8-16-10.)

MEMORANDUM

To: Mayor Mike Ebert, Members of City Council, Staff

From: Gene Hollins, Law Director
Jesse J. Shamp

Date: May 3, 2019

Re: Potential amendments to city traffic code

BACKGROUND

Canal Winchester is considering more severe penalties for distracted driving. The current city code punishes distracted driving with a minor misdemeanor, punishable with a maximum penalty of a \$150 fine. Canal last amended the code in this area in 2010, while the corresponding Ohio Revised Code provision has been modified several times since 2010, most recently in 2018. This memorandum discusses the differences between the City Code and Ohio Revised Code as well as approaches taken by other municipalities.

Under the Home-Rule Amendment to the Ohio Constitution, Ohio municipalities have the authority to exercise all powers of local self-government that do not conflict with general laws. As such, a municipality can regulate in an area such as traffic whenever its regulation is not in general conflict with the general laws of the state of Ohio.

LAW AND ANALYSIS

Canal Winchester City Code § 331.44.

The Canal Winchester prohibition on texting while driving is codified at § 331.44 and prohibits any person from operating a motor vehicle while using a mobile communication device to: (1) manually enter letters, numbers or text messages or read any received emails or text messages transmitted to or stored within such device; or (2) send, read, create, or interact with internet-based content, play games, or otherwise interact with the internet. In Canal Winchester, this is a secondary offense punishable as a minor misdemeanor. That means that currently an officer cannot pull someone over solely because they are texting or using their telephone.

Ohio Revised Code Ban on Texting and Driving.

Ohio Revised Code § 4511.204(A) states that “[n]o person shall drive a motor vehicle...on any street, highway, or property open to the public for vehicular traffic while using a handheld electronic wireless communications device to write, send, or read a text-based communication.”

Section (B) then provides a list of 10 exceptions to the general prohibition. Section (C) makes the offense a secondary violation which means an officer cannot pull over a driver solely because the driver is texting on his or her phone, there must be another primary offense. The entire R.C. section is attached to this memorandum as Exhibit A.

Bexley “Hands Free” Ordinance.

In 2016, Bexley City Council approved Ordinance 27-16, which prohibits the hands-on use of mobile communication devices while driving. In Bexley, drivers must either use hands-free devices or pull out of the flow of traffic to make and receive calls. Using your mobile device while driving is a primary offense in Bexley which means that a police officer can stop and cite a driver for holding his or her telephone. Bexley provided an approximately month-long grace period where it issued warnings for a violation and posted street signs at the city borders to notify drivers of the prohibition. The full language of the Bexley City Code is below.

Bexley City Code 432.38.

- (a) No person shall operate a motor vehicle while using a hand-held, personal communication device in the City of Bexley, Ohio unless such use is otherwise authorized in subsection (b). For the purpose of this section, “hand-held, personal communication device” is defined as a portable electronic device capable of transmitting and/or receiving data and includes any of the following components: wireless telephone; internet-connected device; text-messaging device; computer.
- (b) Notwithstanding the provisions of subsection (a) of this section, this section shall not apply when/to:
 - (1) A driver is using a hand-held, personal communication device inside a motor vehicle when such vehicle is parked, standing, or stopped and is removed from the flow of traffic; or
 - (2) A driver is using a voice operated or hands-free device which allows one-touch activation and otherwise allows the driver to maintain both hands on the vehicle’s steering device while the vehicle is operating; or
 - (3) The operator of an emergency vehicle, or to any person reporting a health or safety emergency.

Local Authority to Regulate Traffic Laws More Strictly than State

In general, when the state has enacted general laws regulating traffic, the municipal police power is confined to ordinances that are not in conflict with those general laws. For example, where a state statute sets a speed limit, a municipality cannot set a speed limit lower than that provided by the state. But municipalities still retain their police power that allows them to maneuver in these areas.

Conflicts exist only when an ordinance permits or prohibits that which a state statute prohibits or permits. Here, the state statute prohibits driving a vehicle while using a device to type or text

and it makes doing so a secondary offense, rather than a primary offense. To date, no Ohio court has reviewed a local code making phone use while driving a primary offense compared to the state code where it is a secondary offense. Therefore, it is unknown whether a court would determine that the state code explicitly *prohibited* making the offense primary, in which case the local code would conflict.

Notably, the state code does not specifically *permit* drivers to use their telephones—*e.g.* the Ohio law does not state “Drivers on Ohio highways shall have the authority to use handheld communication devices while driving.” If it did, then a municipality could not prohibit the use of telephones entirely because the prohibition would directly conflict with state law. Canal could effectively argue that it is just taking the general state prohibition one step further if it were to enact a “hands free” approach like Bexley and so no conflict exists.

CONCLUSION

Canal Winchester likely has the authority to tighten its regulations on the use of telephones while driving. Bexley has gone the farthest of any central Ohio communities by essentially banning the use of telephones within the City, including for telephone calls. Other communities have made distracted driving a primary offense so that an officer can cite a driver solely for distracted driving. And others have increased the penalty from a minor misdemeanor to a fourth-degree misdemeanor so that violators can be fined a higher amount. While the Ohio Revised Code makes the citation a secondary offense and a minor misdemeanor, and Canal Winchester likely has the authority under the Ohio Constitution to increase penalties within its borders, a cautionary word is necessary. Because no Ohio court has ruled on whether or not such a local code conflicts with state law, there is always the possibility that a court could find that the state law requires phone use while driving to be a secondary offense.

Exhibit A

R.C. 4511.204 Driving while texting.

(A) No person shall drive a motor vehicle, trackless trolley, or streetcar on any street, highway, or property open to the public for vehicular traffic while using a handheld electronic wireless communications device to write, send, or read a text-based communication.

(B) Division (A) of this section does not apply to any of the following:

(1) A person using a handheld electronic wireless communications device in that manner for emergency purposes, including an emergency contact with a law enforcement agency, hospital or health care provider, fire department, or other similar emergency agency or entity;

(2) A person driving a public safety vehicle who uses a handheld electronic wireless communications device in that manner in the course of the person's duties;

(3) A person using a handheld electronic wireless communications device in that manner whose motor vehicle is in a stationary position and who is outside a lane of travel;

(4) A person reading, selecting, or entering a name or telephone number in a handheld electronic wireless communications device for the purpose of making or receiving a telephone call;

(5) A person receiving wireless messages on a device regarding the operation or navigation of a motor vehicle; safety-related information, including emergency, traffic, or weather alerts; or data used primarily by the motor vehicle;

(6) A person receiving wireless messages via radio waves;

(7) A person using a device for navigation purposes;

(8) A person conducting wireless interpersonal communication with a device that does not require manually entering letters, numbers, or symbols or reading text messages, except to activate, deactivate, or initiate the device or a feature or function of the device;

(9) A person operating a commercial truck while using a mobile data terminal that transmits and receives data;

(10) A person using a handheld electronic wireless communications device in conjunction with a voice-operated or hands-free device feature or function of the vehicle.

(C)

(1) Notwithstanding any provision of law to the contrary, no law enforcement officer shall cause an operator of an automobile being operated on any street or highway to stop the automobile for the sole purpose of determining whether a violation of division (A) of this section has been or is being committed or for the sole purpose of issuing a ticket, citation, or summons for a violation of that nature or causing the arrest of or commencing a prosecution of a person for a violation of that nature, and no law enforcement officer shall view the interior or visually inspect any automobile

being operated on any street or highway for the sole purpose of determining whether a violation of that nature has been or is being committed.

(2) On January 31 of each year, the department of public safety shall issue a report to the general assembly that specifies the number of citations issued for violations of this section during the previous calendar year.

(D) Whoever violates division (A) of this section is guilty of a minor misdemeanor.

(E) This section shall not be construed as invalidating, preempting, or superseding a substantially equivalent municipal ordinance that prescribes penalties for violations of that ordinance that are greater than the penalties prescribed in this section for violations of this section.

(F) A prosecution for a violation of this section does not preclude a prosecution for a violation of a substantially equivalent municipal ordinance based on the same conduct. However, if an offender is convicted of or pleads guilty to a violation of this section and is also convicted of or pleads guilty to a violation of a substantially equivalent municipal ordinance based on the same conduct, the two offenses are allied offenses of similar import under section [2941.25](#) of the Revised Code.

(G) As used in this section:

(1) "Electronic wireless communications device" includes any of the following:

(a) A wireless telephone;

(b) A text-messaging device;

(c) A personal digital assistant;

(d) A computer, including a laptop computer and a computer tablet;

(e) Any other substantially similar wireless device that is designed or used to communicate text.

(2) "Voice-operated or hands-free device" means a device that allows the user to vocally compose or send, or to listen to a text-based communication without the use of either hand except to activate or deactivate a feature or function.

(3) "Write, send, or read a text-based communication" means to manually write or send, or read a text-based communication using an electronic wireless communications device, including manually writing or sending, or reading communications referred to as text messages, instant messages, or electronic mail.

Amended by 132nd General Assembly File No. TBD, HB 95, §1, eff. 10/29/2018.

Amended by 130th General Assembly File No. TBD, SB 342, §1, eff. 3/23/2015.

Amended by 129th General Assembly File No. 183, HB 606, §1, eff. 3/22/2013.

331.44 SENDING, READING, OR WRITING A TEXT MESSAGE OR ACCESSING THE INTERNET WHILE DRIVING.

(a) As used in this section:

(1) "Text message" means any message sent, stored or received via mobile communication device. For the purpose of this section, an email message shall be considered a text message.

(2) "~~Mobile communication device~~ Electronic wireless communications device" means any portable electronic device capable of transmitting or receiving data in the form of a text message or capable of accessing the internet including but not limited to a wireless telephone, a text-messaging device, a personal digital assistant, or a personal computer, but specifically excluding portable internet based vehicle navigation systems being used for that purpose.

(3) "Emergency vehicles" and "public safety vehicles" shall have the same meaning as set forth in Ohio R.C. 4511.01(D) and (E).

(b) No person shall operate a motor vehicle on any street, highway, or property open to the public for vehicular traffic while using a handheld electronic wireless communications device to write, send, or read a text-based communication. ~~mobile communication device to:~~

~~—— (1) Manually enter letters, numbers, or text messages or read any received emails or text messages transmitted to or stored within such device; or~~

~~—— (2) Send, read, create, or interact with internet-based content, play games or otherwise interact with the internet.~~

(c) Division (b) ~~This provision of this section~~ shall not apply to any of the following:

(1) A person driving a ~~Operators of emergency or public safety vehicles~~ who uses a handheld electronic wireless communications device in that manner ~~where the operator of a public safety device uses such device~~ in the course of the ~~operator's~~ person's official duties;

(2) Any person using a handheld electronic wireless communications device in that manner for emergency purposes, including an emergency contact with a law enforcement agency, hospital or health care provider, fire department, or other similar agency or entity reporting a health or safety emergency;

(3) A person using a handheld electronic wireless communications device in that manner whose motor vehicle is in a stationary position and who is outside the lane of travel; ~~Drivers parked, standing or stopped or removed from the flow of traffic, or stopped due to an inoperable vehicle;~~

(4) A person reading, selecting, or entering a name or telephone number in a handheld electronic wireless communications device for the purpose of making or receiving a telephone call;

(5) A person receiving wireless messages on a device regarding the operation or navigation of a motor vehicle; safety-related information, including emergency, traffic, or weather alerts; or data used primarily by the motor vehicle.

(6) A person receiving wireless messages via radio waves;

(7) A person using a device for navigation purposes;

(8) A person conducting wireless interpersonal communication with a device that does not require manually entering letters, numbers, or symbols or reading text messages, except to activate, deactivate, or initiate the device or a feature or function of the device;

(59) A person operating a commercial truck while using a mobile data terminal that transmits and receives data in the course of the person's official duties.

(10) A person using a handheld electronic wireless communications device in conjunction with a voice-operated or hands-free device feature or function of the vehicle.

(d) A violation of division (b) of this section is a primary offense in the City of Canal Winchester. Notwithstanding any provision of law to the contrary, no law enforcement officer shall cause an operator of an automobile being operated on any street or highway to stop the automobile for the sole purpose of determining whether a violation of subsection (d) hereof has been or is being committed or for the sole purpose of issuing a ticket, citation, or summons for a violation of that nature or causing the arrest of or commencing a prosecution of a person for a violation of that nature, and no law enforcement officer shall view the interior or visually inspect any automobile being operated on any street or highway for the sole purpose of determining whether a violation of that nature has been or is being committed.

(e) Whoever violates this section shall be guilty of a minor misdemeanor.

(Ord. 30-10. Passed 8-16-10.)

[Print](#)

Bexley, OH Code of Ordinances

432.38 WEAVING; FULL TIME AND ATTENTION; HANDHELD COMMUNICATION DEVICES.

(a) No person shall operate a motor vehicle while using a hand-held, personal communication device in the City of Bexley, Ohio unless such use is otherwise authorized in subsection (b). For the purpose of this section, "hand-held, personal communication device" is defined as a portable electronic device capable of transmitting and/or receiving data and includes any of the following components: wireless telephone; internet-connected device; text-messaging device; computer.

(b) Notwithstanding the provisions of subsection (a) of this section, this section shall not apply when/to:

- (1) A driver is using a hand-held, personal communication device inside a motor vehicle when such vehicle is parked, standing, or stopped and is removed from the flow of traffic; or
- (2) A driver is using a voice operated or hands-free device which allows one-touch activation and otherwise allows the driver to maintain both hands on the vehicle's steering device while the vehicle is operating; or
- (3) The operator of an emergency vehicle, or to any person reporting a health or safety emergency.
(Ord. 27-16. Passed 9-13-16.)